IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 189 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

COMMISSIONER OF INCOME-TAX

Versus

B. L. DESAI FAMILY TRUST

Appearance:
1. INCOME TAX REFERENCE No. 189 of 1992
MR MANISH R BHATT for Petitioner No. 1
..... for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE K.A.PUJ

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference at the instance of the revenue, the following question is referred for our opinion in respect of assessment year 1983-84 :-

"Whether, the provisions of Section 161 were applicable on the facts and circumstances of the

case ?"

2. We have heard Mr Manish R Bhatt, learned senior standing counsel for the applicant-revenue. Though served, none appears for the respondent-assessee.

3. In the statement of case drawn by the assessee, it has been specifically mentioned that the Tribunal had followed its decision in ITA No. 192/Ahd/1985. The reference arising out of that order for assessment year 1981-82 was numbered as Income-tax Reference No. 105 of 1987 (Reference Application No. 111/Ahd/1987). At the hearing today, our attention is invited to the decision dated 15.12.1989 of this Court in Income-tax Reference No. 105 of 1987 wherein the Court answered the same question in the same case of the same assessee for assessment year 1981-82 in the affirmative i.e. in favour of the assessee and against the revenue after following the decision of this Court in K.T. Doctor vs. CIT, (1980) 124 ITR 501. The decision of this Court in K.T. Doctor (Supra) has thereafter been confirmed by the Hon'ble Supreme Court subject to certain observations in CIT vs. K.T. Doctor, (1998) 230 ITR 744.

4. Following the aforesaid decision of this Court in Income-tax Reference No. 105 of 1987, we answer the question referred to us in the affirmative i.e. in favour of the assessee and against the revenue.
The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.) (K.A. Puj, J.)
sundar/-